

# Responsibility of the Russian Federation for Shooting Down a Malaysian Passenger Aircraft on 17<sup>th</sup> July 2014

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**Abstract:** *On 17 July 2014, Malaysia Airlines Flight MH17 from Amsterdam to Kuala Lumpur was shot down over Eastern Ukraine. On board Boeing 777 there were 283 passengers and 15 crew members who all lost their lives. The victims’ families and the states whose citizens were lost now seek remedies from those that are responsible for this tragedy. This paper discusses the incident of MH17 which took place in Western Ukraine. This paper uses the analytical approach method applied in legal research with the aims of answering the question presented in the paper. The MH17 incident also brings us many international legal issues, therefore it was necessary to examine the challenges of holding persons responsible for the MH17 tragedy and especially the supplier of the anti-aircraft missile that was used. It then considers international law’s capacity for preventing recurrences of this tragedy by constraining non-state actors’ access to anti-aircraft missiles. Under the doctrine of state responsibility, the Netherlands and/or Malaysia may be able to bring a case before the ICJ for violations of international law and internationally wrongful acts attributable to Russia and/or Ukraine. It seems that that Russia and Ukraine may have violated their obligations under the civil aviation conventions to communicate information, to investigate the situation and allegations against potential perpetrators, and to prosecute or extradite those that may be responsible. One of the two conclusions that could be drawn upon this paper is that not only Russia could be held responsible but also Ukraine is partly accountable for the tragedy. Based on both national and international legislation, it can be argued that Ukraine has a duty to protect foreigners legally passing through its airspace, which could form the legal ground for a case in Ukraine against the state. Second, a civil suit against the airlines could be brought before a court in several states based on Chicago and Montreal Conventions.*

**Key Words:** *armed conflict in Donbass, Russia, Ukraine MH17, non-state actors, state responsibility, individual criminal responsibility*

## 1. INTRODUCTION

The disaster of Malaysian passenger aircraft MH17 took place on July 1, 2014 in Donetsk region, Ukraine, it was shot down by pro-Russian separatists fighting the Ukrainian army in the east of the contry [1]. The catastrophe raises a number of important questions. The most important one is whether Ukraine marked the geographic zone of conflict, assessed the risk or

potential risk for civilian carriers and whether civil aircraft should not avoid flights in and through the conflict zone, or should not take place under certain conditions; the relevant responsibilities of the country of passage are set out in the annexes [5, 6].

The flight took place despite warning from the International Civil Aviation Organization (ICAO) [18]. The governments achieved, that there was a risk of flying over Ukraine for commercial aircraft, and earlier on July 14, 2014, a transport plane of the Ukrainian Armed Forces was shot down with the help of Buk rockets from the height of 6.4 km. After this incident, the Ukrainian State Aviation Agency closed the airspace from about 7925 to 9750 meters, and thus almost to the height of civilian machine flights. It follows that Ukraine was aware of this danger and MH17 was dropped from a height of nearly 10,060 meters. The closure of airspace by the Ukrainian side would be an effective means of avoiding threats that the Ukrainian government is unable to control.

## **2. ACTORS' RESPONSES**

The Ukrainian side according to art. 26 of the Convention on International Civil Aviation of 1944 (known as the Chicago Convention) [9] and with Annex No. 13 to that convention, ICAO asked for an investigation team to be sent to Ukraine to determine the causes of the disaster. In order to clarify the situation and to prevent similar cases, ICAO cooperated with the International Air Transport Association (IATA), the International Airport Council (ACI) and the Civil Service Organization of Air Navigation (CANSO) [3].

In the matter of the disaster in response to the letter of the Permanent Representative of Ukraine to the United Nations (UN) the position was also taken by the Security Council, which regretted the disaster and confirmed that international law prohibits violence that would threaten the security of international air navigation [10]. It stressed the importance of finding those responsible for such violations. It pointed to the need for a fully independent international investigation, in which the main role should be played by ICAO. The recognition by the UN of the authority of States in the airspace over their territory raises a number of consequences of international law [4, 7].

Many of them are defined by the Chicago Convention, and, among others. A ban on international flights within the territory of another state without its authorization belongs to it. In practice, it means that unless the state explicitly permits other entities to use its airspace, they are not allowed to fly through it. Such permits most often take the form of relevant international agreements, both bilateral and multilateral. It is worth adding that the Chicago Convention distinguishes between "civil" and "state" aircraft [2].

On July 29, 2015 at the United Nations (UN) headquarters in New York, a Security Council meeting took place in response to a letter of February 28, 2015 issued by Yuriy Sergeyev, Permanent Representative of Ukraine to the United Nations, to the Chairman of the UN Security Council [11], [12]. The purpose of the meeting was the adoption of a resolution establishing the International Criminal Court on the disaster of the Malaysian Boeing 777. After this speech, the vote on the motion for a resolution was immediately taken. 11 countries voted in favor of it, 3 abstained (Angola, the PRC, Venezuela) and Russia applied the right of veto. Therefore, despite obtaining the majority of votes, the resolution was rejected due to the lack of required support from all permanent members of the Board. In response to the vote, the Minister Vitaly Churkin, another Russian representative, was the next speaker. He began his speech with condolences to the families of the victims of the catastrophe, and then he pointed out that Russia had done everything it could to ensure the speedy adoption of the 2014 resolution RB No. 2166 of 2014 and to conduct an independent investigation [13].

He stated, however, that the other countries decided to communicate outside of the RB via bilateral contacts with Ukraine. He also recalled that Russian experts provided the Dutch investigators with all the data needed in the investigation process, including satellite data, without receiving equal access to information in exchange. He also questioned the impartiality and accuracy of the investigation due to its closed nature. He also noted that Russia not only prepared an alternative resolution for the one who had just been rejected, but also applied for the appointment of a Special Representative of the Secretary General to investigate the causes of the Boeing 777 disaster, which, however, was rejected.

In a further justification of the veto, he said that Russia did not support the establishment of an international tribunal based on Chapter VII of the UN Charter, because in the resolution adopted by RB in 2014, shooting down of the Malaysian aircraft was not considered a threat to international peace and security. He added that appointing of such a tribunal carried enormous costs, as exemplified by the International Criminal Tribunal for the former Yugoslavia. He reminded that when Ukraine shot down a Russian plane, and the United States – the one of Iran, an international tribunal was not appointed on these matters. He also noted that in the case of the problem of piracy, which really threatened international security, the idea of the tribunal did not have the support of the Council. He also stated that submitting a motion for a resolution to vote, despite the awareness of other states that it would not be adopted, clearly exposed the political motives of its authors. Finally, he added that the lack of support from Russia for the creation of an international tribunal in this case was not an expression of its promotion of impunity [13].

In addition to the described case of MH 17, there were also smaller disasters over the years, in which several people were killed. For example, the situation of February 21, 1973, when Boeing 727, belonging to Libyan airlines, took off from Tripoli, heading for the airport in Cairo. It was a regular cruise connection, but due to the coincidence and simultaneous breakdown of the weather and the failure of navigation devices, the plane flew into the Israeli airspace. It is worth remembering that it was a time when Arab states fought with Israel frequently and regularly lost wars. The Libyan plane was then intercepted by two Israeli F-4 Phantom planes. Israeli pilots made contact with the Boeing crew and ordered it to land, but the passenger plane did not carry out the command, which ended in an attack. A series of decked guns caused extensive damage and forced the Libyan pilots to make an emergency landing. Only 5 people survived the disaster. 108 died. Over time, Israel admitted that the decision to shoot down, at the time of the incident, was caused by an erroneous assessment of the situation [14].

In the past, there were accidents of downing passenger aircraft, e.g. on April 20, 1978, a Korean airline with 109 people on board flying from Paris to Seoul strayed from the course and flew towards Murmansk and was shot down by a Soviet fighter, however, the machine was partly damaged and thanks to pilots, the plane landed on a frozen lake (2 people died); The Soviet air defense identified it as an American reconnaissance aircraft Boeing RC-135, which was close to the truth, because the reconnaissance machine was based on the Boeing 707. Su-15 fighters were dispatched to interception, whose pilots correctly identified the intruder as a passenger plane. Because Boeing did not follow the instructions, the fighter pilots received the order to shoot down.

One of the best known example may be a flight on September 1, 1983. Boeing 747-200A (flight from Anchorage, Alaska to Seoul, South Korea) for reasons unknown, strayed from the course and flew for several dozen kilometers into the air space of the USSR over Sakhalin, where it was in the unexplained circumstances, shot down by Soviet fighters, which cost the

deaths of all on board - 269 people, mainly Koreans, but also 61 US citizens, including the House of Representatives Larry McDonald.

The area of this catastrophe was heavily guarded by the Soviet Army at that time because of the cold war that was going on at that time. Hit by a fighter rocket, the Korean plane fell into a spin and fell to the Sea of Japan. At the time of the hit, it was several kilometers outside the USSR. As a result, US-Soviet relations deteriorated, and Aeroflot's aircraft lost the right to fly over US territory. President Ronald Reagan condemned the incident, calling it "massacre", "act of barbarism", and "crime against humanity". The Soviet aircraft was found in the sea shortly after the tragedy, but it was only handed over to Koreans by Russian President Boris Yeltsin in 1992 [14].

In turn, on July 3, 1988, the Iranian passenger plane Airbus A300 with 290 people on board was shot down by the US cruiser USS Vincennes while the plane flew over the Iranian territorial waters of the Persian Gulf in a standard air corridor. According to the Americans, the Iranian plane was mistakenly identified as an Iranian F-14 Tomcat military aircraft. USS Vincennes before launching missiles had 11 attempts to establish radio communications with an airplane that did not respond. The government recognized the attack on a civilian machine as a deliberate act of barbarism and aggression to force Iran to enter into a truce in the ongoing war against Iraq. It should also be remembered that on October 4, 2001, Tu-154 Russian Sibir lines flew from Tel Aviv to Novosibirsk. On the Black Sea it was hit by a rocket fired by the Ukrainian army, which was conducting exercises in the area of the Crimean peninsula. In the fuselage of the hit plane there was decompression and fire, as a result the machine fell into the water. At this point, the sea is 2 km deep. 78 people died.

The problem of the Russian Federation's liability for compensation should be considered from the point of view of the practice of national courts and not from the position of the state's international and legal responsibility. One can agree with the view that the doctrine of liability for damages includes situations when national courts, while considering cases against foreign states, have to resolve the problem of applying a specific legal principle in resolving the dispute. An important element is the assessment and comparison of two different reports from the Dutch commission and the Russian producer BUK from Almaz - Antej from October 2015. In October 2015, the Dutch Safety Board (DSB) published a final report showing the causes of the Boeing 777 disaster flight MH17 [15].

DSB first presented in September 2014 an initial report on the MH17 disaster. It was based mainly on visual inspection of the wreckage on site, photographic material, readings of black boxes and radar data from above-ground stations. The conclusion of this preliminary report was as follows: The plane was destroyed by a large number of shrapnel moving at high speed, which penetrated mainly the front part of the hull from the outside. The investigation was carried out with a wide participation of international experts, and a great part of research and analysis as well as complex computer simulations were carried out by three Dutch institutions (with support from the Ministry of Defense): Netherlands Forensic Institute (NFI), Dutch National Aerospace Laboratory (NLR) and Netherlands Organization for Applied Scientific Research (TNO). A significant exception here was the involvement of the British AAIB, where the black boxes of the plane were read at Farnborough [16].

The Aerospace Corporation, which monitors and manages the registration of fragments of artificial satellites falling into the atmosphere, was also approached, which confirmed that there were no such events in the analyzed place and time. The Dutch side expressed the opinion that the blame for this tragedy could be attributed to Ukraine. It was noted that in the months before the disaster, 16 planes and helicopters of the Ukrainian army were shot down in this area, so it was completely unintelligible to leave this zone as part of the air corridor. It was

claimed that the airspace over eastern Ukraine was not closed despite the obvious threat. It was established that the plane was shot down by: a 9M314M rocket with a 9M314M type cargo fired from the Buk complex boomed over the pilot's cabin from the left side. The report deleted the area from which an ominous rocket was fired: 320 square kilometers. The investigation showed that the 9M314M BUK anti-aircraft projectile head exploded from the left side of the Boeing 777 cockpit, immediately killing both pilots. The impact force was so large that the front of the plane with the pilots' cabin broke away from the rest of the hull. The computer simulations carried out for various size and shape variants of the warhead confirmed that the explosion of the 70-kg BUK missile head is the best for the destruction of the front part of the wreck. In turn, the fragment of the front part of the hull carries a characteristic "disk-like" indentation suggesting the action of the shockwave of the explosion [17].

Computational Fluid Dynamics (CFD) computer simulations showed that local pressure on the skin near the explosion site was about 2,500 kPa. After the explosion within seconds the structure of the aircraft disintegrated. Computer modeling and forensic analysis allowed to locate the location of the rocket head explosion with an accuracy of 1m<sup>3</sup>. These simulations were carried out independently by the Dutch TLO, NLR, the Criminal Research Institute in Kiev and the BUK rocket manufacturer PWO Almaz-Antej. This explosion occurred at a distance of about 3 m to the left of the center of the cockpit and about 4 m above. The evidence for the use of the BEB anti-aircraft missile was the fragments found in the bodies of some of the victims and among the remains of the aircraft. To support this theory, the Dutch inspectors reconstructed from the wreckage parts obtained in the Gilze-Rijen air force base, the pilots' cabin and the front of the hull with the business class section. The 9M314M head is, according to the Dutch report, used in 9M38 and 9M38M1 rockets, used in the Buk, Buk-M1 and Buk-M1-2 missile complexes.

The results of the investigation of the Almaz-Antej company, a weapons manufacturer from Russia on the Boeing catastrophe, deny the conclusions of the Dutch commission regarding the type of rocket that could hit the plane. The results of the reconstruction of the Malaysian Boeing catastrophe in Ukraine confirm that it was shot down from the territory controlled by the Ukrainian armed forces, Boeing was shot down by Buk systems, because it hit it with a 9M38 rocket fired from the Zaroszczenskie town. The rocket, which probably shot down the Malaysian Boeing over Ukraine, was withdrawn from the reinforcement of the Russian army in 2011. The last such missile was produced in the Soviet Union in 1986 and they were also the part of the equipment of the armed forces of the Republic of Ukraine.

The specialists of the group stated that the rocket was launched from the territory controlled by the Ukrainian army near the town of Zaroszczenskoje. Rocket specialists from this group informed about conducting a special experiment in which the impact of the head impact of the currently manufactured BUK rocket on sheet metal made of duralumin was assessed. This was to show that the missile used in the case of MH17 was no longer in the possession of the Russian army. A second experiment was carried out to confirm these theories, recording the effects of the BUK rocket explosion on the front fragment of a real passenger aircraft (the wreck of an Il-76 aircraft, allegedly similar to the Boeing 777) was used. In addition, the corporation conducted a wreck survey to determine the type of projectile used and the place of its launch based on the damage image. They indicated damage to the left side of the cockpit and the left engine, the size of the holes and the angle at which the shards from the rocket got inside (they determined this angle by following the holes in individual shell layers). This would indicate that the missile flew from the areas occupied by Ukraine (this area even indicated on the map [8]).

The concern filed a lawsuit in Luxembourg on the lifting of sanctions imposed on it by the EU in 2014 (on the account that it is a producer of air defense systems used in the conflict in Donbas). According to the management of the group, the complaint is based on the lack of evidence that its production will be provided to separatists fighting in the east of Ukraine, ergo - destabilizing the situation in Ukraine, ergo - sanctions are unlawful and compensation should be paid. It is worth asking questions about both the catastrophe and the possibility of war crime committed by the separatist forces. Who is really responsible for downing MH17? Does the International Criminal Court have jurisdiction to deal with the case? Is it possible to assign an act to a certain state (separatists are a non-state entity), in particular the Russian Federation? It is worth considering whether, in connection with the shooting down of Malaysian airlines on 17 July 2014, it is possible to hold the defense minister of the Russian Federation accountable under the international law [9].

### **3. COMPENSATION CLAIMS**

Another problem is the determination of the possibility of claiming compensation in connection with shooting down of the Malaysian plane from the Russian Federation by an air carrier of Malaysian airlines and by the families of the victims and how much could such damages be? For example, at the end of May 2015, 33 families of Malaysian Boeing crash victims sued the Federation of Russia and President Vladimir Putin on this matter, applying to the European Court of Human Rights for compensation. Each family requires 10 million Australian dollars. The disaster raises an important question whether Ukraine marked a geographical conflict zone, assessed the risk or potential risk for civilian carriers and whether it determined whether civil aircraft should avoid flights within and through the conflict zone or should not take place under certain conditions; the relevant responsibilities of the country of passage are set out in the annexes. Families of the victims of the downed passenger plane of Malaysia's MH17 airlines filed a lawsuit in 2016 before the European Court of Human Rights in Strasbourg against the Ukrainian government and President Petro Poroshenko based on allegations of murdering 298 passengers by negligence and this suit will be ready within about two weeks in which the amounts of compensation for pain and suffering, no less than EUR 1 million for one victim of this tragedy will be presented. The complaint states that Ukraine could have prevented the dropping of a passenger plane if it had closed the airspace over its country, and the death of passengers was caused by the abandonment of the obligation of Ukraine to prevent a catastrophe [20].

Contrary to the legal obligation, Ukraine did not close the airspace to the height on which passenger planes usually fly. Already in the first hours after the crash, people wondered why airplanes fly over battle areas. In the lawsuit, the Ukrainian government was accused of not blocking air traffic over Donbas, where fierce battles were fought, in particular when states that are involved in such conflicts are obliged to take care of aviation security over their territory. Russian separatists many times shot rockets of this type of Ukrainian fighters while they did not have fighter planes themselves. From a purely military point of view, launching missiles by the Ukrainian army would not make sense.

In assessing Russia's responsibility for the downing of the Malaysian plane due to the separatists' mistake, Ukraine's specific contribution should be taken into account. Indeed, it can be pointed out that in an insufficient way it excluded civilian flights from its own airspace in the area of armed conflict, despite the fact that art. 9 of the Chicago Convention allowed it. Just a few days earlier before the catastrophe (on 14 July), an Antonov AN-26 plane was shot down in this region at 6,500 meters. The airspace in Donbas was not completely closed at

once. The Ukrainian authorities only banned flights at a height of 9750 meters. Ukraine may rely on the fact that it is not responsible for the activities of the partisans, which should be treated as a force majeure ruling out the possibility of attributing responsibility to Ukraine for destroying civilian objects. However, one can ask why Ukraine, knowing that it cannot ensure security in a given region, did not declare a forbidden zone (Article 9 of the Chicago Convention of 1944), thus eliminating the danger of a civil aircraft being knocked down [21].

It is helpful to analyze the MTS ruling of 1986 in the Nicaragua case against the United States. On the military and paramilitary activities of the United States against Nicaragua (1986), Nicaragua accused the United States of violating the treaty rules binding parties in mutual relations, ie, described by the UN Charter of Fundamental Principles of International Law: the principle prohibiting intervention in internal affairs of the other country, and the prohibition of the use of force or the threat of the use of force against the territorial integrity or independence of any state. According to Nicaragua, the United States violated the indicated principles of international law, among others in the way that they gave the so-called *contras* forces (guerrilla groups fighting the government and seeking to restore the overthrown regime) hardware, financial and logistical support.

Nicaragua brought, among others for a statement that all *contras* actions (eg attacks on government forces posts) can be attributed to the United States. In the case of Russia, the disclosed recordings between separatists and Russian services may on one hand indicate that Russia controls and separates separatists and, therefore, bears responsibility in the event of effective control conditions being met. However, it may well argue that reporting after the attacks proves some connections, but also indicates that Russia does not decide on individual separatist actions [22].

In conclusion, it should be emphasized that in the light of applicable international law, among others Two Montreal Conventions of 1971 and 2009, regulations of the International Civil Aviation Organization (ICAO), and in accordance with art. 84 of the Chicago Convention of 1944, there is no possibility of claiming compensation from the Russian Federation for the alleged down shooting of the Malaysian line aircraft and the death of its crew and passengers. Finally, in 1984, the 1944 Chicago Convention on International Civil Aviation was granted Art. 3bis, prohibiting the shooting down of civil aircraft - widely accepted, but not ratified and used by all states. The Chicago Convention of 1944 on International Civil Aviation maintained a regime of total and exclusive sovereignty of states in their airspace, with no explicit prohibition of the use of arms in relation to aircraft that would violate the resulting laws of states. In the new Convention, however, there were more provisions to ensure safety and facilities in the movement of aircraft, and the annexes to it (No. 2, 11 and others) contain provisions regulating the "interception" of aircraft, treated as a last resort (no mention of the possible use of weapons in order to shoot down the ship). One possible way of proceeding is filing a lawsuit before the Russian courts, after meeting the requirements of national (Russian) law. Another option is to initiate proceedings before international courts - in an inter-state dispute, as long as the parties, including the Russian Federation, agree to the jurisdiction of the International Court of Justice [22]. In a lawsuit filed on January 16, 2017, Ukraine accused Russia of violating the International Convention on the Elimination of All Forms of Racial Discrimination, and the International Convention for the Suppression of the Financing of Terrorism. The statement of claim also concerns the violation of the United Nations Charter and human rights, including the right to life. Ukraine considers the destruction of Russia's Ukrainian and Tatar identity of the inhabitants of Crimea as a form of racism. Among the acts of terrorism committed with financial and other Russian involvement, the lawsuit lists, inter alia, the shooting down of a Malaysian civilian aircraft

over eastern Ukraine in 2014 and the long-term fire of Ukrainian cities, including Mariupola on the Black Sea. Ukraine also wants damages awarded for shooting down a Boeing Malaysian airline in 2014 and firing civilians in eastern Ukraine, as well as for ruling that Russia sponsored terrorism [23].

Ukraine distinguished in the lawsuit an anti-racist convention and anti-romity convention, because it contains provisions on disputes between states to the International Court of Justice - including those that did not submit declarations on the recognition of the mandatory jurisdiction of the ICJ. Neither Russia nor Ukraine have made such declarations, but both countries are parties to both conventions [19]. Provisional measures requested by Ukraine include a ban on Russia's support for further expansion of pro-Russian forces on Ukrainian territory and their attacks against civilians. Also - the ban on further Russian collective and individual repressions against Ukrainians and Tatars in the Crimea, including a ban on suppressing their linguistic, cultural and educational freedoms [23].

The entire lawsuit includes, among other things, a demand for full compensation from Russia for all victims, damage and losses caused by aggression to Ukraine. Ukraine filed a lawsuit to the Hague tribunal only in January 2016, which is three years after the events in which the lawsuit is in issue. It is also the last Ukrainian lawsuit against Russia before an international tribunal. The International Court of Justice recognized in part the legitimacy of Ukraine's lawsuit against Russia, which it ordered to allow in the Crimea to teach in Ukrainian and not to block the activities of Tatar representative bodies there. In the 2017 ruling of the International Court of Justice, it was noted that at the current stage of the proceedings evidence it was not sufficient to confirm the thesis that rebels in the east of Ukraine received money and weapons from Russia. The Tribunal expressed the hope that the two states would work together to implement the Minsk agreements aimed at restoring peace in eastern Ukraine.

The conduct within the framework of diplomatic protection; in the dispute between individuals with the Federation of Russia before the European Court of Human Rights, after exhausting the national road is also worth considering, and if it was shown that Russia violated the rights protected by the Convention for the Protection of Human Rights and Fundamental Freedoms from 1950.

At the end of 2016, President Vladimir Putin announced that his country would not participate in the International Criminal Court (ICC), appointed to judge individuals accused of committing serious crimes against humanity under the Rome Statute [24].

Although Russia signed the Statute of Rome, it did not ratify it. Ukraine also did not ratify it, but granted the ICC limited authorization to collect information about events from the end of 2013. Currently in the ICC, preliminary investigation The European Court of Human Rights (ECHR) in Strassburg Ukraine has filed five lawsuits against Russia since 2014, the sixth is being prepared.

It is worth recalling that on January 16, Ukraine filed a lawsuit at the ICJ, accusing Russia of breaking two international conventions: on combating terrorist financing and abolishing all forms of racial discrimination. In the first case, it is about providing arms and other support operating on the territory of Ukraine to illegal armed groups, and in the second one about discriminating against non-Russian groups of the Crimea, in particular Ukrainians and Tatars.

As an example of the terrorist act using the Russian weapon, the lawsuit mentions shooting down on July 17, 2014 over eastern Ukraine, a Malaysian passenger plane, in whose remains 298 people were killed, mostly the Dutch.

In connection with the complaint submitted by Ukraine to the MTS Ukraine requested the Court in The Hague to declare Russia's "international accountability" for shooting down the Malaysian MH1 aircraft [24].

## 4. CONCLUSIONS

There are still doubts as to whether you can prove who is responsible for launching a rocket when examining a plane wreck. The question arises as to whether after the distribution of holes you can know the position of the rocket axis at the moment of the explosion (and on this basis determine the position of the launcher). While the position of the aircraft has been recreated on the basis of “black boxes”, in the case of rockets it is impossible. In addition, Russian rockets are not repetitive and the effects of one set can be significantly different from systems produced later.

Both the Russian side and the foreign commissions had no doubts that the cause of the MH17 flight disaster was the Buk missile explosion, where representatives of the Russian Federation say that the crash was caused by the 9M38 missile, which is currently not used in Russia, it is still in June 2015. Similarly to the Dutch rapporteur, 9M38M rockets were indicated. The guilty issue of those aviation tragedies remains, and here both sides have opposite theories. In the Dutch report, the Dutch clearly indicate that the rocket was fired from the territory occupied by the separatists, from an area of about 23 km<sup>2</sup>. According to the Russians, it was a Ukrainian anti-aircraft system and the projectile itself was fired from a set from around the village of Zaroszczeńskie in Ukraine. Most likely, the pro-Russian separatists from Donbas are standing behind the Malaysian Boeing, who may have been mistaken in thinking that they are firing at the transport IL and not the passenger MH17, and that it was a deliberate provocation of Ukrainian services to raise their local conflict to the global level. The only thing is certain that the rocket was fired from the area of 320 km<sup>2</sup>, which according to the Dutch investigators was probably then under the control of pro-Russian separatists.

## REFERENCES

### Literature

- [1] F. Bryjka, *Russian substitute war in Donbas*, Ante Portas Studia nad bezpieczeństwem, p. 207, 2016.
- [2] Cf. Berezowski, M. Polkowska, *International aviation law, Warsaw 1964; contemporary manifestations - the sovereignty of the state in the air space. Genesis, scope, evolution*, C1 Warszawa, 2009.
- [3] C. Mik, Legal Opinion on legal and international aspects of pursuing claims against the Russian Federation and its representatives in connection with the shooting a passenger airplane of Malaysian Boeing 777-200ER airlines on July 17, 2014, flight 3701, *Zeszyty Prawnicze BAS*, nr 4 (44), 2014 down of p. 3.
- [4] M. Osiecki, *The shooting down of the plane and the principle of air superiority*, SPE, t. C1, p. 101, 2016.
- [5] M. Żylicz, *The new law of international air transport*, PiP No. 9/1999; M. Żylicz, *Aviation law - international, European and national*, Warszawa 2011.
- [6] J. Vagner, A. Čekanova, S. Szabo, R. Rozenberg, Fatigue and stress factors among aviation personnel, *Acta Avionica*, Volume XX, 39-No. 2, acta –avionica, tute.sk. ISSN 1335-947, p.23.
- [7] T. Sober, B. Lippaj, P. Necas, *Contemporary air Power: Significant security stakeholder?*, WSBiP w Ostrowcu Św. B5 ss 243. ISBN :978-83-64557-24-8.

### Netografia

- [8] \* \* \* The organization, created on the basis of the Chicago Convention on International Civil Aviation of 1944.
- [9] \* \* \* Convention on International Civil Aviation, signed in Chicago on December 7, 1944, (*Journal of Laws of 1959* No. 35, 212, as amended).
- [10] \* \* \* Preamble of the resolution of 21 July 2014. (S/RES/2166 (2014)).
- [11] \* \* \* Report of the meeting of the United Nations Security Council no. 7498 on the establishment of an international tribunal for the disaster of a Malaysian aircraft, flight No. MH-17, New York, 29 July 2015, DOI 10.14746 / ps.2016.1.30.
- [12] \* \* \* United Nations Security Council meeting report No. 7498 on the establishment of an international Malaysian plane crash tribunal, flight no. MH-17, New York, 29 July 2015.

- [13] \* \* \* The International Criminal Tribunal for the former Yugoslavia (ICTY) was established on the basis of Resolution 827 adopted by the Security Council of the United Nations on 25.05.1993.
- [14] \* \* \* <http://aviation-safety.net/database/record.php?id=19730221-1>; [24.04.2016].
- [15] Onderzoeksraad Voor Veiligheid, *Preliminary report points towards external cause of MH17 crash*, 9 September 2014, s. 11, <http://www.onderzoek.nl/en/2049/inves-crash-preliminary-report/7-rash>, 16.10.2016.
- [16] \* \* \* <http://pmk.salon24.pl/674018,katastrofa-mh17-raport-koncowy>, 16.10.2016.
- [17] Onderzoeksraad Voor Veiligheid, *Preliminary report points towards external cause of MH17 ash*, 9 September 2014, s. 11, <http://www.onderzoek.nl/en/preliminary-report/7-crash>, 16.10.2016.
- [18] \* \* \* <http://pmk.salon24.pl/674018,katastrofa-mh17-raport-koncowy>, 16.10.2016.
- [19] \* \* \* According to the European Union, the Russian authorities provide arms to the severe separatists in eastern Ukraine, contributing to the destabilization of this country. This weapon is used by separatists, including for shooting down aircraft.
- [20] S. Dean, *Eight Australian families of MH17 victims will sue Russia, Ukraine, Malaysia and the airline after their loved were shot out of the sky*, "Daily Mail Australia" 3.12.2014. <http://www.dailymail.co.uk/news/article/-Eight-Australian-families-MH17-victims-sue-Russia-kraine-Malaysia-airline-loved-ones-shot-sky.html>, 16.10.2016.
- [21] \* \* \* Wezeman confirmed the allegations made earlier by the German lawyer Elmar Giemulla, representing the relatives of the German victims of this disaster. Giemulla, who is a professor of aviation law, suggests that the Ukrainian authorities have abandoned the closure of ay. German relatives complained to the European Court of Human Rights in Strasbourg.
- [22] \* \* \* Juairspace for financial reasons. The proceeds from the right to travel are estimated at two million euros per ddgment of the ICJ of June 27, 1986 on military and paramilitary activities in and against Nicaragua, ICJ Reports 1986.
- [23] \* \* \* The first lawsuit presented in the ECHR concerns the events of the turn of September and October 2014 related to the illegal annexation of Crimea, the second - the beginning of Russian aggression in Ukraine, and the subsequent - the continuation of the occupation of the Crimean peninsula and the Donetsk and Luhansk oblasts, as well as the so-called "orphans" complaint was lodged on the basis of art. 33 of the Convention on Human Rights, which allows each of the States Parties to the Convention to bring proceedings against another party to the Convention if the complainant considers that the defendant State has breached the provisions of the Convention or its Protocols.
- [24] \* \* \* However, the Russian Constitutional Court ruled that it belongs to the last word on the implementation of the ECtHR judgments. And that means that from the Russian point of view they may be unrealized.

Dutch name suspects for 2014 Malaysian Airlines crash over east Ukraine which killed 298. A Malaysian air crash investigator inspects the crash site of Malaysia Airlines Flight MH17, near the village of Hrabove (Grabovo) in Donetsk region, Ukraine. Photograph: Maxim Zmeyev/File Photo/Reuters. Sergey Dubinskiy, a member of the Russian military intelligence agency, the GRU, was head of intelligence of the DNR, and deputy to Mr Girkin. Oleg Pulatov, a former special forces soldier with the GRU's Spetsnaz unit, which has undergone a renaissance since Vladimir Putin became president, was Mr Dubinskiy's deputy head of intelligence. The possibility also exists that they wanted to shoot down a Ukrainian military aircraft and not a passenger aircraft. Despite mounting evidence that Moscow-backed rebels are responsible for shooting down Malaysia Airlines flight MH17 over eastern Ukraine, Russia's media is still painting a very different picture. RFE/RL reports. A Malaysian air crash investigator inspects the crash site of Malaysia Airlines Flight MH17, near the village of Hrabove (Grabovo), Donetsk region on 22 July, 2014. The more likely scenario, Baranets argues, is that the passenger jet was downed by the Ukrainian military, which mistook it for a Russian military aircraft. Writing that only a Buk surface-to-air missile system could have hit a plane flying at 33,000 feet, Baranets claims Ukraine has 75 Buk systems in its arsenal. There is also an anti-aircraft defence station around 25 miles from Donetsk. On the 17th of July 2014, Malaysian Airlines flight MH17 left the Dutch capital Amsterdam and headed towards the Malaysian capital Kuala Lumpur. As it flew over Eastern Ukraine, the plane was shot down, killing all 298. down an aircraft.10. The International Court of Justice (ICJ) has the right to bring states, which are parties to its Statutes, before the Court. Therefore, the Donetsk People's Republic cannot be held responsible before the ICJ as it is not a State party to its Statutes. The shooting down of the plane took place during military operations in Ukraine. However, although the incident took place over Ukrainian territory, the problem of establishing the responsibility of the Ukrainian State is. U.S. officials say pro-Russian rebels were responsible for shooting down Malaysia Airlines Flight 17, but they now believe it's likely the rebels didn't know the plane was a commercial airliner when they opened fire, U.S. intelligence officials said Tuesday. Families of crew members aboard Malaysia Airlines Flight 17 gather for a vigil Tuesday, July 22, in Kuala Lumpur, Malaysia. All 298 people aboard the passenger plane died when it was shot down Thursday, July 17, in a rebel-controlled part of eastern Ukraine. Dutch cyclists wear a black armband in honor of the crash victims during the 13th stage of the Tour de France on July 18. Dutch Justice Minister Ivo Opstelten observes a moment of silence after signing a condolence book in The Hague on July 18.